

DSS Questions and Answers on SBCH Parental Consent Regulations

Q: Which regulations have been revised?

A: Regulations have been amended for Part B of the Individuals with Disabilities Education Act (IDEA or Act). The revised regulations change the requirements in 34 C. F. R. (Code of Federal Regulations) § 300.154(d) related to written notification and parental consent to access public benefits.

Q: Where are these new regulations published?

A: The new regulations can be found in the Electronic Code of Federal Regulations website (www.ecfr.gov). The link to the revised regulation is:

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=76ddb67f9b9d995991775786830afa96&rgn=div8&view=text&node=34:2.1.1.1.1.2.48.52&idno=34>

The regulations may also be found in the Federal Register, published February 14, 2013. The link to this document is: <https://federalregister.gov/a/2013-03443>.

Additional information, including a one-page summary of the revised regulations, and Q&A guidance, can be found on the U.S. Department of Education (USDOE) website: <http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html>

Q: What do the new regulations require?

A: Under the new regulations, a school district must obtain parental consent before accessing a child's or parent's Medicaid benefits for the first time. The new regulations also require that the public agency provide written notification to the child's parents before parental consent is obtained.

Q: Why is the School District, rather than the Medicaid Agency (Department of Social Services), providing parents with written notification and parental consent forms?

A: The regulation requires the " **public agency**" to provide the written notification and to obtain parental consent in order for the school district to bill Medicaid. The "public agency" includes school districts that are responsible for providing education to children with disabilities. See 34 C. F.R. § 300.33.

Q: What are “public benefits or insurance programs,” as defined in the federal regulation?

A: “Public benefits or insurance programs” refers to a State’s Medicaid program. In Connecticut, School Based Child Health (SBCH) services are covered under Medicaid.

Written Notification Requirements

Q: What are the written notification requirements under the new regulations?

Prior to accessing a child’s or parent’s public benefits for the first time, and annually after that, a public agency must provide written notification, to the child’s parents. The notification must include the following:

- 1) A statement describing the parental consent requirements in the federal regulations (see Q&A below related to Parental Consent Requirements) ;
- 2) A statement explaining that the school district must provide all required services at no cost to the parents.
- 3) A statement that the parents have the right to withdraw their consent to disclosure of their child’s personally identifiable information to the Medicaid agency at any time; and
- 4) A statement that the withdrawal of or refusal to provide consent to disclose personally identifiable information to the Medicaid agency does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

The notification must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. The notification also must be provided before the school district obtains parental consent.

Q: How may written notification be provided to parents?

A: There are a number of ways in which the public agency may provide the required written notification to parents.

The written notification may be:

- mailed or
- e-mailed if requested by the parents, and if consistent with your public agency policies, or
- provided at an IEP Team meeting if the meeting occurs prior to the first time a public agency accesses a child’s or parent’s public benefits, or

- provided through other means determined by the public agency, as long as all of the written notification requirements in the new regulations are met and the notification is given before obtaining parental consent.

Q: May the school district post the written notification post in its website instead of providing it to parents in the ways described above?

A: While there is no federal guidance currently available, this question was discussed in a National Alliance for Medicaid in Education (NAME) teleconference call on 5/1/13. It was suggested that posting the notification on a website would not be adequate, as there would be no way of knowing whether the parent actually received the notification.

Q: How should the school district document that the written notification has indeed been provided to parents, as required by federal regulation?

A: There is no federal guidance on this issue. Other states, however, have added a statement to the parental consent form that the parent acknowledges that he/she **has received** and understands the written notification.

Q: Can the written notification be provided to parents at the same time that the Parental Consent form is provided to parents?

A: Yes.

Q: When must subsequent annual written notification be provided to parents?

A: Schools have discretion to determine the timing of subsequent annual written notifications, as long as it done on an annual basis. Some states are providing the subsequent annual written notification to parents in a package along with other special education documents that must be provided to parents on an annual basis.

Q: Because eligibility for Medicaid may not necessarily coincide with annual IEP Team meetings, may public agencies provide the written notification to ALL parents of children with disabilities, regardless of whether the school district is seeking to bill Medicaid for the SBCH services that the child receives?

A: There is nothing in the regulations that specifically permits or prohibits the school district from providing written notification to all parents of children with disabilities.

Q: The written notification form available on the Connecticut State Department of Education (CSDE) website has fields that appear to be required to be

completed by the District. What addresses/phone numbers should be used in these fields?

A: School contact information should be provided in these fields.

Q: Why can't I electronically populate the fields in the written notification available on the CSDE website?

A: CSDE IT staff have tested the document in all versions of Adobe Reader, and have found no issues. However, there may be a compatibility issue with the browser being used to view the document. If you are using Chrome or Firefox rather than Internet Explorer, you will need to make a change within your browser to view the document in Acrobat Reader rather than in the browser viewer. These problems require adjusting the settings for your viewer, and are not reflective of a technical problem with the document itself.

Another issue could be related to the device being used to view the document. You may not be able to populate the fields if you are using an iPad, and there could be problems if viewing the document with a Mac computer as well.

Parental Consent Requirements

Q: What are the parental consent requirements under the new regulations?

A: Public agencies must obtain parental consent before releasing a child's personally identifiable information from education records for billing purposes to the Medicaid program for the first time. This consent must include a statement specifying that the parent understands and agrees that the public agency may access the child's or parent's Medicaid to pay for SBCH services. In addition, the consent form must include the following:

- 1) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child),
- 2) The purpose of the disclosure (e.g., billing for services under 34 C.F.R. Part 300),
- 3) The entity to which the disclosure will be made (e.g., the Department of Social Services, State's Medicaid agency), and
- 4) That the parent understands and agrees that the school district may access the child's or parent's Medicaid to pay for services that are provided to the child under 34 C.F.R. Part 300.

Q: How should the school district fill out the middle section of the CSDE Parental Consent Form?

A: Schools have discretion to determine the information to include in this section. Some suggestions are as follows:

- Regarding the question “What records are being disclosed?”, a general answer such as “SBCH Records” may be used. More specific information such as name, address, date of birth, student ID, Medicaid ID, disability, and dates and services delivered may also be used.
- Regarding the question “What is the purpose of the disclosure of the records?”, the answer “Billing for Services” may be used.
- Regarding the question “To what agency are the records being disclosed?”, the answer “Medicaid” may be used.

Q: Because eligibility for Medicaid may not necessarily coincide with annual IEP Team meetings, may public agencies ask ALL parents of children with disabilities, to sign a consent form, regardless of whether the school district is seeking to bill Medicaid for the SBCH services that the child receives?

A: There is no federal guidance on this issue.

Q: If a parent has previously declined to provide parental consent to disclose personally identifiable information to the Medicaid agency may the school continue to ask for consent?

A: Yes. After providing the written notification to the parent, the school district may make reasonable requests to obtain the parental consent.

Q: Can Medicaid claims be submitted for dates of service that have occurred prior to the date that parental consent is obtained?

A: ~~Yes. If the parent has not previously denied consent or the child is new to the SBCH program, the district may bill for Medicaid claims in accordance with the timely filing guidelines — up to 12 months after the date of service. If the claim is older than six months you should contact Will Hauschulz at the Department of Administrative Services (DAS) at 860-713-5395 or Will.Hauschulz@ct.gov and he will provide you with specific instructions on how to file the claim. No. Per informal guidance received from the U.S. Department of Education, parental consent is prospective, therefore, the school may not bill for services provided prior to the date on which parental consent is obtained.~~

Q: If a parent previously provided the school consent to bill Medicaid, but then revokes that consent, for which dates of service may the school bill Medicaid?

A: The revocation of consent is effective the date that it is signed. The district should not bill for an SBCH service on the date that it receives the revocation and going forward. Additionally, if the school has not yet billed for a service but receives the revocation before submitting a claim, the school should not submit a bill for those services, after the revocation is received.

Q: If a parent previously provided the school consent to bill Medicaid, but then revokes that consent, is the district permitted to keep previously paid reimbursements for that student?

A: Yes, the district is permitted to keep reimbursements previously paid for that student.

Q: If a parent previously denied the school consent to bill Medicaid, but then subsequently provides the school consent to bill Medicaid, does the consent override the previous denial of consent?

A: ~~The new consent overwrites the previous denial, but t~~The school can only bill for services from the date of parental consent going forward.

Q: Does a one-time consent permit billing of Medicaid for the past 12 months even if the student's parents had previously denied consent?

A: No. If the parents/guardians have previously denied consent, the school should only bill for services going forward.

Q: Does obtaining parental consent at an IEP meeting violate HIPAA?

A: No. The HIPAA Privacy Rule does not apply to an elementary or secondary school. For more information about this, please see:

- Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records, Page 3.
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/hipaaferpajointguide.pdf>

Q: Is a student who is 18 years old or older permitted to sign the parental consent form?

A: A school district should provide the notification and consent forms to the parents of all students for whom it bills Medicaid, regardless of the student's age. If a parent or student raises a question about who should sign the parental consent form, the

school district may contact DSS, and DSS will confirm for the school the Medicaid eligibility of student and whether the student or the parent is the Medicaid applicant.

Q: Should a surrogate/foster parent, or a DCF social worker, be provided the written notification and sign the parental consent form?

A: Per DCF, school districts should contact their local DCF area offices with respect to who should receive and sign the forms.

Sample Forms

Q: Are there examples of the written notification and parental consent forms available?

A: Yes. The CSDE has posted guidance, a sample written notification, and a sample parental consent form on its website at:

<http://www.sde.ct.gov/sde/cwp/view.asp?a=2678&Q=320730#Legal>

Q: Are the written notification and parental consent forms available in Spanish?

A: Yes. The written notification and parental consent forms are available in both English and Spanish on the CSDE website.

Q: Why do the written notification and parental consent available on the CSDE website have the word “Sample” in the title? Does this mean they are draft documents and not final yet?

A: No. The forms available on the CSDE website are final documents. The word “sample” means that school districts may choose to use these forms, but are not required to do so. School districts may choose to modify the CSDE forms, or use their own forms, as long as they are consistent with the requirements in federal law, 34 C.F.R. § 300.154(d)(2)(iv) and 34 C.F.R. § 300.154(d)(2)(v).

The Sample Consent form available on the CSDE website is below with the required elements of 34 C.F.R. § 300.154 (d) (2) (iv) highlighted:

Sample Consent Form for School-Based Health Services

This consent form allows the _____ (School District) to bill your or your child's public benefits or insurance for covered health-related services (such as physical therapy or speech therapy) in your child's Individualized Education Program (IEP). The funds received from your or your child's public benefits or insurance help pay for the cost of providing these services.

Student's Rights to Special Education*

- ✓ Your child's right to receive the services listed in his or her IEP will continue, without interruption and at no cost to you, whether or not you sign this form.
- ✓ Giving consent will not impact your or your child's public benefits or insurance coverage.
- ✓ You have the right to refuse consent or withdraw your consent at any time.

Consent for the _____ (School District) to Access Parent(s)/Guardian(s) or Student's Public Benefits or Insurance for Student's Health-Related Educational Services		
Student's Name: _____ <div style="display: flex; justify-content: space-between; width: 100%;"> <i>Last Name</i> <i>Middle Name</i> <i>First Name</i> </div>		
Student's Date of Birth: _____ Student's SASID #: _____		
The school district is seeking permission to access your or your child's public benefits or insurance and to release the following personally identifiable information in order to do so <i>(To be filled out by the school district)</i>		
What records are being disclosed? <small>(such as, records or information about the services that may be provided to a particular child)</small>	What is the purpose of the disclosure of the records? <small>(such as, eligibility determination, billing for services and auditing)</small>	To what agency are the records being disclosed? <small>(such as Medicaid)</small>

_____ I have reviewed my child's IEP dated: _____. I understand and agree to give my consent for _____ (School District) to bill my or my child's public benefits or insurance, in accordance with state and federal laws, for health-related educational services in my child's IEP. By signing this consent I authorize the _____ (School District) to release my child's records (as indicated above) to my or my child's public benefits or insurance as necessary for the purposes indicated above. I understand that, upon request, I may receive copies of records disclosed pursuant to this authorization.

_____ I do not give my consent or am withdrawing my consent to the accessing of my or my child's public benefits or insurance and I do not consent or am withdrawing consent to the disclosure of the previously described personal data. I understand that my refusal does not affect my child's access to any service(s) to which he/she is entitled under the Individuals with Disabilities Education Act*.

REQUIRED PARENTAL CONSENT FORM ELEMENTS (highlighted above):

1. Consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child),

2. Consent must specify the purpose of the disclosure (e.g., billing for services under part 300),
3. Consent must specify the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid).
4. Consent must specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

Billing Medicaid

Q: What is required for students currently receiving SBCH services for which the school has already billed Medicaid prior to March 18, 2013?

A: The school district must provide written notification to parents before the school may continue to bill Medicaid, and must obtain parental consent prior to July 1, 2013. The school district must provide the written notification annually after that.

Q: What is required when a child has an IEP but the school has not previously sought to access the parent's or child's Medicaid to pay for services under the IDEA, and the school seeks to access the child's or parent's public benefits or insurance for the first time?

A: As of March 18, 2013, if a school district seeks to access the child's or parent's Medicaid to pay for services for the first time, the school district must provide the parents with written notification and obtain parental consent before billing Medicaid for the first time. The school district must provide the written notification annually after that.

Q: Will submitted claims be rejected if a school district has not been able to provide written notification, or has not been able to obtain parental consent from parents, as outlined in the new federal regulations?

A: No. The claims will be paid, but the school district will be violating the federal law.

Q: Do the new regulations apply to the use of private insurance?

A: 34 C.F.R. § 300.154(d)(2)(iv)-(v) applies to public benefits and insurance programs and does not apply to private insurance programs. The requirements for children with disabilities covered by private insurance are found in 34 C.F.R. § 300.154(e).

Relocation to New School District

Q: How is written notification and parental consent handled when a child relocates to another school district or another State?

A: The responsibility for providing notification and obtaining parental consent prior to the disclosure of personally identifiable information for billing purposes and before accessing a child's or parent's public benefits or insurance for the first time rests with the school district, not with the individual school. Thus, if a child who had an IEP in effect in a previous school district transfers to a school in a new school district in the same school year, whether or not within the same State, the new school district must provide notification and obtain parental consent before billing Medicaid for the first time, and annually after that. If a child transfers to a different school but remains within the same school district, the notification and parental consent that the school district has provided and obtained remain valid. .

Administrative Questions

Q: If sending by postal mail, do the written notification and parental consent forms need to be sent by registered mail?

A: No. The school may determine the most appropriate method by which to send the written notification and parental consent form to parents.

Q: Is a cover letter required to accompany the written notification and/or the Parental Consent form?

A: No. A cover letter is not required.

Q: Where should parental consent forms be filed?

A: They should be kept in the child's IEP file.